

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 1927.02
 COMPLAINT INVESTIGATOR: Brian Smikins
 DATE OF COMPLAINT: June 3, 2002
 DATE OF REPORT: July 3, 2002
 REQUEST FOR RECONSIDERATION: no
 DATE OF CLOSURE: September 4, 2002

COMPLAINT ISSUES:

Whether the Kokomo-Center Township Community School Corporation and the Kokomo Area Special Education Cooperative violated:

511 IAC 7-25-5(a) by failing to provide a parent, upon request, with information about where an independent educational evaluation may be obtained and the school's criteria applicable to independent education evaluations.

511 IAC 7-25-7 by requiring the parent to sign the school's form to initiate an additional evaluation rather than accepting the parent's written request as consent for the evaluation as permitted in 511 IAC 7-25-4.

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically:

- a. failing to provide speech 25 minutes per session, two sessions per week; and
- b. providing group speech therapy instead of individual speech therapy.

FINDINGS OF FACT:

1. The Student is eleven years old and attends the local elementary school (the "School"). The Student is eligible for special education and related services as a student with a learning disability.
2. The School received a written request from the parent for an independent educational evaluation ("IEE") on May 17, 2002. Upon receiving the request, the School notified the parent, in a letter dated May 20, 2002, that the School would pay for the independent evaluation requested. The School's letter also asked the parent to make an appointment to choose from a list of evaluators and to sign the necessary release forms. The letter did not include a list of evaluators or the School's criteria applicable to conducting an IEE. This notification letter was sent to the parent via certified mail. A copy of the envelope shows that the parent refused to claim the certified mail on May 22, 2002 and again on May 27, 2002. The certified letter was returned to the School unclaimed. However, the School took no further action to notify the parent regarding the IEE request or to provide information.
3. The parent wrote a second letter requesting an IEE dated June 3, 2002, and it was received by the School at a case conference committee ("CCC") meeting convened that day. During the CCC meeting, the School provided the parent with lists containing information about where an IEE may be obtained and the School's criteria applicable to conducting an IEE, and the parent selected an evaluator for the independent educational evaluation and a different evaluator for the independent speech evaluation. On June 14, 2002, the School sent a letter to the parent again granting the request for an IEE at the School's expense and summarizing the independent evaluators the parent chose. This letter also requested that the parent sign two enclosed Release of Information forms. Although the letter does not state that signing the release forms is a condition of the School paying for the independent evaluations, it states that the School needs the parent to sign the release forms "so that [the School] can make contact with [the evaluators] to make the necessary arrangements for payment and also to provide them with information in order to

conduct the evaluations.” There is nothing in the letter advising the parent that signing the release is optional or that declining to sign the release will have no impact on the School’s payment for the independent evaluations. It is the School’s policy to:

- a. conduct a meeting where the parent is required to choose an independent evaluator from the School’s list,
- b. make the appointment for the independent evaluation, and
- c. forward information about the student to the independent evaluator.

The parent declined to sign and return the release forms, and the School has not yet made the appointment for the independent evaluations. Although the information about the independent evaluators contained sufficient information for the parent to contact the evaluators, the parent has not contacted either evaluator to schedule an appointment because of the letter received from the School regarding the School making the arrangements.

4. The parent’s letter dated May 16, 2002, and received by the School on May 17, 2002, also made a request for additional evaluations to be conducted by the School in the areas of occupational therapy and dyslexia. The School responded in a letter dated May 20, 2002, that it was prepared to conduct the occupational therapy evaluation but wanted to discuss the request for dyslexia because the Student was already eligible for special education as a student with a learning disability in reading. The letter states that the School will take the referral information for the additional evaluations at the same time the parent schedules the appointment to make arrangements for the independent evaluation. The School asserts it needed the parent to complete certain information on the School’s occupational therapy referral forms that helps the occupational therapist design a specific test battery. The parent did not schedule an appointment regarding the independent evaluation. Sixty instructional days have not yet elapsed from May 17, 2002, the date the School received the parent’s written request for additional evaluations. The School reports that it started the sixty instructional day timeline for conducting the additional evaluations on May 17, 2002, the date the School received the parent’s written request.
5. The Student’s IEP dated November 9, 2001, states that the Student is to receive “speech therapy 2X weekly for 25 minute sessions.” According to the Complainant, the speech language pathologist stated at the CCC meeting held on May 28, 2002, that the Student was receiving speech therapy in a session with another student for fifteen minutes. The speech language pathologist’s notes and log indicate that the Student is scheduled with one other student every Monday and Wednesday from 11:30 to 12:00. The session is not divided into 15-minute blocks of time solely devoted to one student while the other sits and does nothing. The sessions are for 25 to 30 minutes in length requiring all students in a session group to participate for the entire session. The IEP dated November 9, 2001, does not indicate the nature of the speech therapy services to be provided (i.e., individual or group therapy). The School reports that speech therapy is provided in sessions of two or more students unless the speech language pathologist deems it necessary to provide a student with individual speech therapy and the CCC agrees. However, there is nothing in the CCC Report or IEP to indicate that the CCC considered whether the Student needed individual or group speech therapy.

CONCLUSIONS:

1. Finding of Fact #2 reflects that the School, in response to a parent’s request for an IEE, required the parent to make an appointment in order for the parent to obtain a list of potential independent evaluators. The School did not provide this list independently and did not follow up with the parent when the notification letter was returned to the School. Finding of Fact #3 indicates that the information was provided pursuant to a subsequent request approximately two weeks later. Therefore, a violation of 511 IAC 7-25-5(a) is found with respect to the first request for an IEE, but no violation is found with respect to the second request. In addition, corrective action is needed to resolve the delay in scheduling the IEE that has resulted from the impasse between the parent and the School over the School requiring the parent to sign release of information forms as part of the IEE.
2. Finding of Fact #4 establishes that the parent submitted a written request for additional evaluations on May 17, 2002. The School acknowledges that the 60 instructional day timeline for completing the evaluations and convening a CCC began on May 17, 2002, when it received the parent’s written request. Therefore, no violation of 511 IAC 7-25-7 is found.
3. Finding of Fact #5 indicates that the Student’s IEP states that the Student is to receive 25 minutes of speech therapy two times each week. The IEP does not specify whether the speech therapy is to be provided individually or in a

group. The Student receives two 30-minute sessions of speech therapy each week with another student. Therefore, no violation of 511 IAC 7-27-7(a) is found.

DISCUSSION:

Independent educational evaluations

The School's policies and procedures for responding to a parent's request for an IEE are problematic in the requirements they place on parents. Because the School's letter to the parent indicates no alternative to the parent making an appointment with the School to choose from the School's list of evaluators, signing forms to allow the School to disclose the student's educational records to the independent evaluator, and having the school make the IEE appointment, the requirements are easily perceived as conditions to be met in order to obtain an IEE at public expense.

Upon a parent's request, the School is required to provide a parent with a list of independent evaluators and the School's criteria applicable to conducting an IEE. The list of independent evaluators should contain sufficient information to allow the parent to contact the evaluator without assistance from the school. When a parent requests an IEE at the School's expense, the School must decide whether to pay for an independent evaluation or initiate a due process hearing to establish that the School's evaluation is appropriate. There is nothing in the IDEA regulations or Article 7 that requires a parent to choose from the School's list of potential independent evaluators or that requires a parent to consent to the disclosure of educational records to the independent evaluator as part of an IEE.

Although the School may offer the parent the option of having the school make the appointment with an independent evaluator and may offer the option of consenting to the disclosure of the student's educational records to the independent evaluator, it may not require the parent to comply with these requirements as part of an IEE.

Specificity in an IEP

In this situation, the manner in which the IEP described the speech therapy services did not provide sufficient information for the parent to know that the student would be receiving speech therapy in a group setting rather than individually. In order for a parent to give consent, the parent must be fully informed of all information relevant to the activity for which consent is sought (511 IAC 7-17-18). The IEP or the CCC Report must provide the type of information lacking in the IEP in this case. Further, the type of speech therapy services (i.e., individual or group) to be provided to a student is a CCC decision. The speech language pathologist may make a recommendation to the CCC regarding the type of speech therapy services to be provided, but the therapist's recommendation or lack thereof does not control the CCC's ultimate decision.

The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Kokomo-Center Township Community School Corporation and the Kokomo Area Special Education Cooperative shall:

1. immediately advise the parent in writing:
 - a. that he or she may schedule the IEEs with evaluators who meet the school's criteria applicable to such evaluations,
 - b. that consenting to the disclosure of the Student's educational records is not a condition of the School paying for the IEE; and
 - c. of any procedures to ensure payment to the independent evaluator.

A copy of the letter shall be submitted to the Division no later than July 17, 2002.

2. review and, if necessary, revise their policies and procedures to ensure that parents are provided with information about independent evaluators and the School's criteria applicable to IEEs without having to make an appointment with school personnel. The policies and procedures must also ensure that parents are made aware of their options in scheduling an IEE and disclosing the student's educational records to the

independent evaluator. **A copy of the policies and procedures shall be submitted to the Division no later than August 30, 2002.**